

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The specification has been amended to correct an error in the number for one of the background documents mentioned. It is believed that this would not constitute new matter.

Claim 1 has been amended to incorporate the subject matter of claim 6 and to specify the serving size mentioned on page 7. The claim has also been amended to specify that the majority of sterols is at least 50 wt%. In claim 13 the parenthetical word, which is considered redundant, has been eliminated. New claims 18 and 19 are presented specifying that the sterols comprise phytosterols.

As pointed out in the specification, it has been reported that diets with an effective amount of cholesterol-lowering (plant) sterols resulted in a measurable decrease in lipophilic carotenoids in the blood. The present invention now aims at solving this problem, and also at achieving a carotenoid status in blood which is maintained, or preferably improved. In the present invention, a specific distribution of the carotenoids and the sterols over different phases is used. Moreover, for a beneficial effect the carotenoids in the composition should preferably contain β -carotene and lycopene in a specific ratio, all as now recited in claim 1. Claim 15 recites a process whereby such a composition can be obtained.

It is submitted that the claimed subject matter is neither disclosed in nor derivable from the documents cited, and hence the presently claimed subject matter is novel and unobvious over said prior art.

The Examiner indicates on page 2 of the action: "The claims appear to differ from Joy of Cooking.....in that the butter contains phytosterols in a particular amount." While Joy of Cooking does refer to carrots with butter, it appears to be silent on sterols or phyto sterols being present in the butter. The Office has pointed to no reference teaching that butter contains sterols or plant sterols in any substantial amount, unless added to it specifically, which is not the case of Joy of Cooking.

Hallstrom teaches a butter substitute that does contain phytosterols. In that, it is not different from other documents that disclose the use of sterols or phytosterols. However, the Office points to no teaching in these documents that addresses the problem of how to avoid a lowering of the carotenoid status in blood resulting from adding sterols. It should be emphasized that the invention recited in claim 1 is not just adding carotenoids to a composition that contains sterols to compensate for this; the recited invention is in adding the carotenoids in a specific format and in a specific ratio, both of which are not disclosed in the cited art.


The Office asserts that it is obvious to substitute the composition of Hallstrom (which contains sterols) for the butter of Joy of Cooking (which is poured over carotenoid-containing carrots). This ignores the unexpected result of the present invention. This unexpected benefit is that the carotenoids are added in a specific format to sterol-containing compositions and the carotenoid-reducing effect of sterols is neutralized. Moreover, the carotenoid status in blood can now be raised while the carotenoids are in

the same composition as the sterols. The Office points to no teaching of this before. The Office apparently finds no indication whatsoever in the documents cited that this was possible by using the claimed composition.

It is submitted that the Office's rejection is based on a hindsight analysis; now that it has been discovered that carotenoid-reducing effects of sterols can be reduced or even reversed by adding carotenoids in a specific format, it is easy to find two documents that describe both elements of the invention; sterols and carotenoids in a specific format. Still, that does not make the combination, by which an unexpected benefit is obtained, obvious. If that would be the case, then all inventions in food industry which would comprise combinations of two known entities obvious, which is certainly not the case for all such combinations.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



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VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the specification

The paragraph beginning on page 2 at line 28 has been amended as follows:

~~WO 98/130233~~ WO 98/13023 discloses foodstuffs containing microcrystalline plant sterols. Preferably, the foodstuff is a spread based on a combination of sweetening agent, a microcrystalline plant sterol and a suitable berry or fruit. Most of the fruits ~~disclosed~~ disclosed do not contain carotenoids in any significant amounts, only apricots do contain β -carotene.

In the claims:

Please amend claims 1 and 13 and add new claims 18 and 19 as follows:

1. (Amended) Edible composition comprising ~~(phyto)~~ sterols or derivatives thereof in an amount of at least 0.5 (g) per 100-150 (g) serving, further comprising carotenoids in an amount of at least 1 (mg) per ~~serving~~ 100-150 (g), and wherein at least 20% wt of the carotenoids is in another phase than ~~the majority of the (phyto) sterols~~ at least 50% wt of the total amount of the sterols present, and wherein said carotenoids comprise β -carotene and lycopene in a ratio of between 1:20 and 1:0.2.

13. (Amended) Composition according to claim 1, in the form of a sauce, paste, puree, ketchup ~~(catsup)~~, soup, juice or similar product.

18. (New) Composition according to claim 1 wherein the sterols comprise phytosterols.

19. (New) Composition according to claim 5 where the sterols comprise phytosterols.